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UNCLAS SECTION 01 OF 03 WARSAW 001211

SIPDIS

STATE FOR EUR/CE MGLANTZ AND MLIBBY
STATE FOR EEB/TPP/IBE TMCOWAN, TO'KEEFE, AND JURBAN
STATE PASS TO USTR FOR JENNIFER GROVES AND DAVID WEINER
COMMERCE FOR HILLEARY SMITH AND MICHAEL ROGERS

E.O. 12958: N/A
TAGS: [ECON](#) [ETRD](#) [KIPR](#) [PL](#)
SUBJECT: POLAND: OUT OF CYCLE REVIEW OF INTELLECTUAL
PROPERTY RIGHTS

REF: A. A. WARSAW 259
[1](#)B. B. WARSAW 225

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[1](#)1. (SBU) Summary and Comment. We assess the Polish Government's (GoP's) November 23 Out-of-Cycle review (OCR) submission as credible. The GoP has tightened its efforts to fight IPR violations, particularly with regard to internet piracy, to strengthen public awareness of the value of IP, and to build training capacity for prosecutors and judges. Despite those improvements, counterfeit products continue to be available at markets on the German border, though in declining amounts. Renewed GoP efforts to fight IP violations are responsive in part to USG and industry concerns, but Poland's leadership appears increasingly aware that a weak IP regime damages Poland's own efforts to build innovation into the domestic economy. Post recommends Poland be removed from the Special 301 Watch List.

[1](#)2. (SBU) We understand that the OCR decision with respect to Poland may be delayed to the spring. We strongly urge against delay. Poland's presence on the Watch List since 2003, despite the dramatically improved IP protection regime here, has weakened the list's value as a tool of engagement. The present OCR motivated a robust GoP response to the process. We fear the Section 301 process will lose all credibility here should we fail to complete our end of the process. End Summary and Comment.

Assessment of the GoP's Report

[1](#)3. (SBU) The GoP's November 23 submission for the OCR is a credible, detailed response to USG concerns as outlined in the Section 301 Out-of-Cycle Action Plan for Poland. The report shows stepped-up efforts

- against piracy in marketplaces and on the internet,
 - to train specialized Polish judges and prosecutors,
 - to better coordinate interagency efforts to fight piracy,
- and
- to raise public awareness about the value of protecting IP.

[1](#)4. (U) The report asserts continued strong cooperation of the police, border guards and customs officers in planning and running enforcement actions at markets throughout the country. The GoP credits, for example, engagement between law enforcement and market operators - including operators of

border markets - with reduced distribution and smuggling of optical media. Police, customs and border guards seized goods worth over Euro 19 million (USD 28.1 million) in the first half of 2009. The report credits law enforcement as well as a move to internet distribution of digital content with the general decline in the identification of counterfeit IP in markets.

15. (SBU) Rights holders organizations in Poland - International Intellectual Property Alliance-affiliate ZPAV, Motion Picture Association of America-affiliate FOTA, and the Business Software Alliance (BSA) - report they do not question the report's data. The groups generally praise GoP enforcement efforts as well as cooperation with the groups themselves. They support the GoP claim that more effective enforcement has driven down volume of goods and therefore of seizures, including at border markets. FOTA's representative shared his internal statistics with Econoff, which show that out of 586 cases passed to the police through November 2009, police have carried out 569 raids resulting in 551 criminal proceedings. The largest seizures were seen in illegal DVDs, DVD-Rs, and Sony Playstation DVDs. ZPAV's representative pointed to a set of recent raids - and new ones in the works - to underscore improvements of cooperation now taking place.

16. (U) The government has formed an "Internet Group" that brings together the ministries of Justice, Interior, Finance, and Culture with internet service providers (ISPs) to target and coordinate enforcements efforts against internet piracy. The Business Software Alliance's (BSA) representative in Poland praises the increasing efficiency of the GoP's IP protection efforts and its increasing focus on combating internet piracy. That new focus led to the October take-down of a massive, illegal file-sharing service receiving over two

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million hits per month. Police arrested two men operating the service and seized the company's property. The Ministry of Culture is also working to amend the Corporation Law to enable the GoP to capture more effectively corporate and business software piracy and peer-to-peer piracy cases.

17. (U) The GoP's report describes a stepped-up training regime. One hundred and forty one judges were professionally trained on IP law in 2009. In a separate program, another 60 judges will attend a new one-year post-graduate program in Intellectual and Industrial Property Law in 2010. Polish police and the Internet Group have created a dedicated "Portal for Knowledge Management" and a specialized training guide - "Methodologies in Disclosing and Combating Intellectual Piracy on the Internet" - to support prosecutors and judges in internet piracy cases. At the same time, the report documents increased criminal proceedings, convictions, and imprisonments. Discontinued or terminated cases are down, and sentencing more often results in imprisonment.

18. (U) A newly formed Team for Counterfeit Medical Products (CMP) is now integrated into the overall "Team for Counteracting Infringements of Copyright and Related Rights." The CMP brings together representatives of the National Public Prosecutor, the Commander-in-Chief of the Police, the Chief of the Sanitary Inspectorate, the Head of the Customs Service, and the Health Ministry's Main Pharmaceutical Inspector to coordinate and direct efforts against counterfeit pharmaceuticals. The CMP is focused on internet sales (the location of 80% of illegal sales), sex shops, gyms, and market places. The team has supported and directed enforcement actions, in conjunction with pharmaceutical and sanitary inspectors from local governments, leading to seizures of counterfeit erectile dysfunction drugs and dietary supplements. Criminal prosecutions are underway in the courts.

19. (U) The GoP has created a "Rights Protection Committee" for the protection of IP rights related to the Euro 2012

soccer tournament, to be co-hosted in Poland. The committee's aim is to better protect brands and trademarks related to the Euro Cup by establishing working relationships among national agencies and with authorities in hosting cities well ahead of the competition.

¶10. (U) Although not documented in the report, the GoP has also initiated an innovative new program of public education.

All students attending university in Poland must now attend two semesters of classes on IPRs and patent/copyright protection. The curriculum was designed by the Polish Patent Office and requires a minimum mandatory attendance of 30 hours of classtime per semester. Classes are tailored to suit the differing disciplines of students' home faculties.

¶11. (U) More traditionally, the GoP's Patent Office has instituted a country-wide poster design competition to bring awareness of the value of IP. The competition draws a very large number of entries, as well as the sponsorship and participation of pharmaceutical companies, government ministries, and the World Intellectual Property Organization.

In a similar vein, the GoP adapted for use in Poland a World Health Organization campaign against counterfeit drugs and is preparing a campaign to protect IP-related rights in the Euro 2012 soccer tournament.

What Still Needs Work

¶12. (U) Border Markets: Traffic in pirated goods continues at some markets on the German border. Market operators are not yet contractually obliged to prevent the sale of pirated goods on their property, and rewriting contracts may take several years to achieve. Nonetheless, law enforcement has engaged with market operators, improving enforcement and reducing volumes of pirated goods. One apparel company representative with responsibility for both Poland and the Czech Republic stated that the problem with border markets in the Czech Republic "is three times worse than in Poland".

¶13. (U) Destruction: Rights owners continue to complain about the complexity of the destruction of counterfeit goods seized by customs officers. In order to destroy counterfeit copies of trademarked goods, the owner of the seized goods has to be

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found within a ten-day period and must cover the cost of the destruction. The owner often cannot be found, leaving rights holders with the choice of paying out of pocket to destroy goods or leaving fake goods in a customs warehouses. Other EU Member States, such as Germany, have adopted a simplified destruction policy that does not require the involvement of the owner of seized goods, allowing the goods to be destroyed right away. Polish rights holders want Poland to move to the simplified destruction policy.

¶14. (SBU) Pharmaceuticals: The Ministry of Health continues to avoid meaningful consultation with pharmaceutical companies. However, the Ministry has opened itself - modestly - to meeting with the representatives of U.S. pharmaceutical companies' local association - the LAWG. Deputy Minister Marek Twardowski met with the LAWG October 28, the second time in two quarters, to discuss a new Reimbursement Act and regulations regarding prices and market access issues.

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